

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish work-related disability on and after February 27, 2015 causally related to the accepted cervical sprain.

On appeal counsel asserts that it was improper for OWCP to give greater weight to OWCP's referral physician simply based on his specialty.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts as presented in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On March 19, 2015 appellant, then a 43-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that wearing a shoulder bag to deliver mail caused neck and right arm pain and numbness. He had stopped work on February 27, 2015.⁴ On May 7, 2015 OWCP accepted the claim for cervical sprain.

Appellant's attending Board-certified physiatrist, Dr. J. David Lynch, advised in reports dated from March 16 to May 18, 2015 that appellant could not work due to thoracic strain, cervical strain, myofascial pain, and possible disc problem.

On June 15, 2015 appellant filed a notice of recurrence (Form CA-2a) for the accepted neck sprain for which he stopped work on February 27, 2015. In an attached statement he noted that beginning April 26, 2013 he had to use a shoulder satchel that weighed between 10 and 35 pounds, and on February 25, 2015 this caused neck strain and increased pain, numbness, and tingling radiating down his right arm, which continued. Appellant related that the pain kept him from sleeping and nothing had made the pain better. He advised that he had not worked since February 27, 2015 due to both injuries, the present claim and OWCP File No. xxxxxx562.

By decision dated June 29, 2015, OWCP denied appellant's claim for a recurrence of disability beginning February 25, 2015 due to the accepted cervical sprain. Appellant, through counsel, timely requested a hearing before an OWCP hearing representative. Dr. Lynch continued to submit reports relating that appellant was totally disabled.

In August 2015, OWCP referred appellant to Dr. P. Kent Thrush, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a September 3, 2015 report, Dr. Thrush described his review of the medical evidence and reported his physical examination findings. He found no objective evidence that appellant continued to have a cervical sprain, advising that his neck pain was due to underlying early degenerative disc disease of the cervical spine. Dr. Thrush opined that appellant was not objectively partially or totally disabled from employment. He

³ Docket No. 16-1893 (issued March 21, 2017).

⁴ The record indicates that appellant has a separate claim for a February 25, 2005 employment injury, adjudicated by OWCP under File No. xxxxxx562 and accepted for thoracic strain. The instant claim was adjudicated by OWCP under File No. xxxxxx907.

concluded that appellant could work eight hours daily with no restrictions due to cervical sprain and was objectively capable of performing the job of mail carrier.

On September 29, 2015 OWCP proposed to terminate appellant's wage-loss compensation and medical benefits, based on the opinion of Dr. Thrush. Appellant disagreed with the proposed termination and submitted additional reports from Dr. Lynch.⁵ Dr. Lynch reported that appellant had been his patient since December 12, 2012 for a chronic thoracic spine injury that occurred in February 2005 (OWCP File No. xxxxxx562).⁶ He advised that under OWCP File No. xxxxxx562, appellant had a permanent 35-pound weight restriction and was restricted to use of a mail cart. Dr. Lynch indicated that appellant reported that he had to begin using a shoulder satchel on April 23, 2013, and it was only after that time that appellant began to experience cervical pain and right arm pain and numbness. He opined that the use of the shoulder bag was consistent with appellant's injury of a mild disc bulge at C5-6 superimposed over a left disc herniation. Dr. Lynch reported that he took appellant off work in February 2015 when appellant's condition became unmanageable due to pain. He concluded that the use of the mail satchel caused appellant's thoracic spine injury (OWCP File No. xxxxxx562) to increase in pain and spasms, and caused the new cervical spine injury (OWCP File No. xxxxxx907) to worsen, causing strain and bulging disc/herniation. Dr. Lynch advised that appellant could return to work with a 35-pound weight restriction and that he must use a mail cart.

On November 25, 2015 OWCP terminated appellant's wage-loss compensation and medical benefits, effective that day. It found that the weight of the medical evidence rested with the opinion of Dr. Thrush.

Appellant, through counsel, timely requested a hearing with an OWCP hearing representative from the November 25, 2015 decision. A hearing was held on February 29, 2016 regarding both the June 29 and November 15, 2015 decisions. By decision dated April 5, 2016, the hearing representative found that the weight of the medical evidence rested with the opinion of Dr. Thrush and affirmed the June 29 and November 15, 2015 OWCP decisions. He did not address whether additional conditions should be accepted. Appellant appealed to the Board.

By decision dated March 21, 2017, the Board affirmed the April 5, 2016 decision of OWCP's hearing representative. The Board found that appellant did not meet his burden of proof to establish that he was disabled on or after February 27, 2015 due to the accepted neck sprain. The Board further found that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits on November 25, 2015 because he no longer had residuals of the accepted cervical sprain, and that he did not establish that he had a continuing employment-related condition or disability after November 25, 2015.⁷

⁵ One of his reports, received by OWCP on October 5, 2015, was undated. The second report was dated October 21, 2015 and was received by OWCP on October 29, 2015.

⁶ *Supra* note 4.

⁷ *Supra* note 3.

On May 8, 2017 appellant, through counsel, requested reconsideration and submitted a December 15, 2016 report from Dr. Lynch.

In that report, Dr. Lynch noted that he had been following appellant since December 2012 for chronic mid back pain. He reported that appellant had a significant increase in neck pain and mid-back pain in February 2015, and he placed him off work. Dr. Lynch noted that a magnetic resonance imaging scan performed on July 15, 2015 revealed cervical bulging at C5-6 and C3-4. He maintained that appellant's neck injury actually occurred in June 2013 when he strained his neck while carrying a shoulder satchel at work and that he was unable to work from February to October 2015 due to a flare up of back and neck pain.

By decision dated August 3, 2017, OWCP reviewed the merits of appellant's claim and denied modification of the prior decisions. It found that the evidence submitted did not support that he had continuing residuals after February 27, 2015 causally related to the accepted cervical sprain.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence.⁹ For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.¹⁰ Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.¹¹

Causal relationship is a medical issue. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹³

⁸ *Supra* note 2.

⁹ See *Amelia S. Jefferson*, 57 ECAB 183 (2005); see also *Nathaniel A. Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968).

¹⁰ See *Amelia S. Jefferson, id.*; see also *David H. Goss*, 32 ECAB 24 (1980).

¹¹ See *Edward H. Horton*, 41 ECAB 301 (1989).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ See *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

ANALYSIS

The Board finds that appellant failed to establish that he was disabled due to his accepted cervical sprain after February 27, 2015.¹⁴

Following the Board's March 21, 2017 decision,¹⁵ counsel requested reconsideration and submitted a December 15, 2016 report from Dr. Lynch. In its March 21, 2017 decision, the Board reviewed a number of reports in which Dr. Lynch described the same findings and opined that appellant had been disabled since February 27, 2015 due to cervical and back pain. Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value.¹⁶ The Board finds that Dr. Lynch's December 15, 2016 report is duplicative of his prior reports, especially that dated October 21, 2015. Dr. Lynch again indicated that appellant was disabled due to an increase in neck and back pain, but offered no rationalized medical explanation as to how appellant's accepted conditions of cervical strain caused disability for any specific date after February 27, 2015. Thus, there is no medical evidence of record of sufficient rationale to establish that appellant was disabled after February 27, 2015 due to the accepted cervical sprain. Appellant, therefore, did not meet his burden of proof.¹⁷

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish work-related disability on and after February 27, 2015 causally related to the accepted cervical sprain.

¹⁴ As the Board had previously affirmed the termination of appellant's wage-loss compensation and medical benefits on November 25, 2015, absent further merit review of this issue by OWCP pursuant to section 8128 of FECA, this issue is *res judicata*. See *M.S.*, Docket No. 17-0539 (issued July 13, 2017).

¹⁵ *Supra* note 3.

¹⁶ See *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

¹⁷ As to counsel's assertion on appeal, although the Board has held that opinions by physicians who have training and knowledge in a specialized medical field may have greater probative value to that field than the opinions of other physicians, no individual factor standing alone necessarily determines the weight of such medical evidence. Citing the medical specialty of the respective attending physicians was an inadequate justification on which to favor one physician over the other. One medical report should not be arbitrarily selected over the other. *C.M.*, Docket No. 09-1268 (issued January 22, 2010). In the case at hand, however, OWCP found Dr. Lynch's opinion of insufficient rationale to establish continuing disability, and the Board finds his December 15, 2016 report duplicative of his reports previously reviewed by the Board in its March 21, 2017 decision.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board